

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

RAYMOND KEITH THOMAS

PLAINTIFF

V.

NO. 5:17-CV-19-DCB-MTP

M.T.C., ET AL.

DEFENDANT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on Plaintiff Raymond Keith Thomas's Complaint pursuant to 42 U.S.C. § 1983 [Doc. 1]; on the Defendants' Motion for Summary Judgment [**Doc. 26**]; and on United States Magistrate Judge Michael T. Parker's Report and Recommendation [**Doc. 37**]. This Court ADOPTS the Report and Recommendation, GRANTS the Defendants' Motion for Summary Judgment, and DISMISSES the action WITHOUT PREJUDICE.

**Background**

Raymond Keith Thomas ("Thomas"), proceeding pro se and in forma pauperis, filed a Complaint [Doc. 1] pursuant to 42 U.S.C. § 1983. Thomas alleges that Defendants Gabriel Walker and Jody Bradley directed Officer Davis<sup>1</sup> [see Doc. 15] to give Thomas's mail

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<sup>1</sup> Thomas did not name Officer Davis as a defendant.

to another inmate. See Doc. 1 and Doc. 17. Thomas claims that because his mail was given to another inmate, he missed responding to a notice from the Southern Poverty Law Center and the Mississippi Bar. Doc. 17. Thomas claims that the alleged mishandling of his mail constituted retaliation and violated his right to due process. Doc. 17. Thomas filed an Administrative Remedy Program ("ARP") grievance, complaining that his mail was given to another inmate. Doc. 26-1, p.1, 3. On November 5, 2016, Deputy Warden Gabriel Walker completed a First Step Response. Doc. 26-1, p.2. Mr. Thomas received the completed response on November 25, 2016. Id. The First Step Response stated, "If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Legal Claims Adjudicator within 5 days of your receipt of this decision." Doc. 26-1, p.4. Thomas submitted his second step appeal to the inmate legal assistance program on December 6, 2016—eleven days after Thomas received the First Step Response. Doc. 26-1, p.2, 6. Thomas's appeal was denied as untimely. Doc. 26-1, p.2, 7.

### **Summary Judgment Standard**

Summary judgment is proper if the defendants shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). If the defendants show the absence of a disputed material fact, Thomas

cannot, in reply, simply direct the Court to conclusory allegations or a scintilla of evidence favorable to him. Lincoln v. Scott, 887 F.3d 190, 195 (5th Cir. 2018). He must instead “go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial.” McCarty v. Hillstone Restaurant Grp., Inc., 864 F.3d 354, 357 (5th Cir. 2017).

The Court views facts and draws reasonable inferences in Thomas’s favor. Vann v. City of Southaven, Miss., 884 F.3d 307, 309 (5th Cir. 2018). As always, the Court neither assesses credibility nor weighs evidence at the summary-judgment stage. Wells v. Minnesota Life Ins. Co., 885 F.3d 885, 889 (5th Cir. 2018).

### **Exhaustion**

The Prison Litigation Reform Act (“PLRA”) requires prisoners to exhaust any available administrative remedies before filing suit under 42 U.S.C. § 1983. 42 U.S.C. §1997e(a). PLRA non-exhaustion is an affirmative defense, and defendants bear the burden of proving that a prisoner has failed to exhaust available administrative remedies. Jones v. Bock, 549 U.S. 199, 216 (2007); see Dillon v. Rogers, 596 F.3d 260, 266 (5th Circuit 2010). A prisoner cannot satisfy PLRA’s exhaustion requirement by filing an “untimely or otherwise procedurally defective administrative grievance.” Woodford v. Ngo, 548 U.S. 81, 83 (2206).

### **Analysis**

Thomas's appeal was untimely. Doc. 26-1, p.7. Therefore, the Court adopts Magistrate Judge Parker's Report and Recommendation, grants the defendants' motion to dismiss, and dismisses this action without prejudice.

Accordingly,

IT IS ORDERED that Magistrate Judge Michael T. Parker's Report and Recommendation **[Doc. 37]** is ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that Defendants' Motion for Summary Judgment **[Doc. 26]** is GRANTED, and Plaintiff Raymond Keith Thomas's Complaint **[Doc. 1]** is DISMISSED WITHOUT PREJUDICE.

SO ORDERED, this the 4th day of October, 2018.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE